

Timothy N. Durenleau

Timothy W. Berard

TNT DISTRIBUTORS, INC.

t/a Evans Distributor

1817 Paxton Street

Harrisburg, PA 17104

Dear Mr. Durenleau and Mr. Berard:

ISSUE: This is in response to your letter of August 31, 1999, which was received in this office on September 21, 1999. You seek our opinion regarding whether your importing distributorship can own and operate a draught coil cleaning business under the same corporate umbrella and out of the same establishment. The cleaning business would be separately run, fully registered with the Commonwealth, and have separate financial accountability. The manager of the cleaning business would not be affiliated with the distributorship in any way. You also ask if the cleaning business would require a physical separation in the building, with its own separate entrance and phone.

OPINION: Generally speaking, you must seek approval of the Board when you want to operate another business, regardless of where it is, because section 492(12) of the Liquor Code [47 P.S. Section 4-492(12)] prohibits any licensed distributor or importing distributor, or its servants, agents, or employees, from engaging in any other business whatsoever except the business of distributing malt and brewed beverages, unless it has the approval of the Board. Typically, your letter would be construed as a request for Board approval and we would forward it as such to the Board for its consideration. In this case, however, there is a Board Regulation of which you may not be aware and it may affect whether or not you wish to seek Board approval. Because your proposed other business is one that involves draught coil cleaning, you should know that the cleaning of coils, tap rods and connections by one licensee for another licensee is prohibited by section 5.51 of the Board's Regulations. [40 Pa. Code Section 5.51]. Since it seems likely that the clientele base for your proposed other business would be licensed retail establishments, i.e., other licensees, you would be barred from doing their cleaning. Thus, you may wish to consider using a corporate entity different than the one which holds your importing distributorship license.

If, after consideration of the above, you still want to request permission of the Board to pursue your alternate business venture under the umbrella of your distributor license, please send your formal request in writing to this office and we will see that it is forwarded to the Board.

THIS OPINION APPLIES ONLY TO THE FACTUAL SITUATION DESCRIBED HEREIN AND DOES NOT INSULATE THE LICENSEE OR OTHERS FROM CONSEQUENCES OF CONDUCT OCCURRING PRIOR TO ITS ISSUANCE. THE PROPRIETY OF THE PROPOSED CONDUCT HAS BEEN ADDRESSED ONLY UNDER THE LIQUOR CODE AND REGULATIONS. THE LAWS AND POLICIES ON WHICH THIS OPINION IS BASED ARE SUBJECT TO CHANGE BY THE LEGISLATURE OR THE PENNSYLVANIA LIQUOR CONTROL BOARD.

Very truly yours,

FAITH S. DIEHL  
Chief Counsel

c.c. Pennsylvania State Police

Bureau of Liquor Control Enforcement

LCB Advisory Opinion No. 99-345